UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of THE COMMONWEALTH OF PUERTO RICO, *et al.*, Debtors.[1]	PROMESA Title III No. 17 BK 3283-LTS (Jointly Administered)
In re: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of PUERTO RICO ELECTRIC POWER AUTHORITY ("PREPA"), Debtor.	PROMESA Title III No. 17 BK 4780-LTS **Re: ECF No. 1951** **This Motion relates to PREPA and shall be filed in Lead Case No. 17 BK 3283-LTS and Case No. 17 BK 4780-LTS.**

DECLARATION OF FERNANDO M. PADILLA IN SUPPORT OF PREPA'S URGENT MOTION FOR ENTRY OF AN ORDER AUTHORIZING PREPA TO ASSUME CERTAIN CONTRACTS WITH ECOELÉCTRICA, L.P. AND GAS NATURAL APROVISIONAMIENTOS SDG, S.A

I, Fernando M. Padilla, under penalty of perjury, declare as follows:

1. I am the Administrator of the Program Management Office of Restructuring and

[1] The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico ("Commonwealth") (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Fiscal Affairs with the Puerto Rico Electric Power Authority ("PREPA"). I am over 18 years of age.

2. In my role as Administrator in the Program Management Office, I (i) develop policy rationales that inform the PREPA Governing Board regarding project prioritization and approach to project implementation; (ii) confer with and advise PREPA's management and Governing Board on fiscal and restructuring matters; and (iii) implement PREPA's certified fiscal plans and oversee full compliance of corporate strategy, financials, budget, and project implementation to secure working capital for PREPA.

3. I am familiar with certain of the books, records, policies and documents maintained by PREPA (the "Business Records"). The Business Records are kept by PREPA in the regular course of their business and are made at or near the time of the events appearing therein by, or from information provided by, persons with knowledge of the activity. It is the regular course of business for PREPA to make such records. I am authorized to make and submit this declaration on behalf of PREPA. Except as otherwise noted, I have personal knowledge of the matters set forth herein or have also relied on information and analyses provided to me by other PREPA employees and PREPA's advisors. If called and sworn as a witness, I could and would testify competently thereto.

4. This Declaration is made in support of *PREPA's Urgent Motion for Entry of an Order Authorizing PREPA to Assume Certain Contracts with EcoEléctrica, L.P. and Gas Natural Aprovisionamientos SDG, S.A.* (the "Motion").[2]

The ECO PPOA and the Naturgy GSPA

5. Prior to the renegotiation and restatement of the ECO PPOA and Naturgy GSPA

[2] Capitalized terms not otherwise defined herein shall have the meaning given to them in the Motion.

(together, the "Contracts"), the Pre-Restatement Contracts provided the contractual basis for a program (the "LNG-to-Power Program") under which (i) Naturgy imported liquefied natural gas ("LNG") into Puerto Rico at a LNG terminal facility, owned by ECO and located in Peñuelas (the "ECO LNG Terminal"), converted the LNG to natural gas and sells such natural gas to PREPA for supply to Costa Sur Generation Facility under the terms of the Pre-Restatement GSPA, and (ii) ECO imported LNG into Puerto Rico, converted the LNG into natural gas at the ECO LNG Terminal for supply to the ECO Generation Facility and sold the power generation capacity and energy of such facility to PREPA under the terms of the Pre-Restatement PPOA. PREPA has historically sourced up to 40 % of the baseload power in Puerto Rico through this LNG-to-Power Program. The Pre-Restatement GSPA will expire in December 2020 and the Pre-Restatement PPOA will expire in March 2022.

6. The Oversight Board certified a 2018 Fiscal Plan on August 1, 2018 and a 2019 Fiscal Plan on June 27, 2019 for PREPA (collectively, the "Fiscal Plans"). It is my understanding that both Fiscal Plans contemplated, *inter alia*, a renegotiation of the Pre-Restatement Contracts to achieve cost savings for PREPA.[3] Naturgy controls (through a Tolling Services Agreement with ECO) the entire existing capacity of the ECO LNG Terminal to receive and vaporize LNG for the delivery of natural gas to the ECO Generation Facility and Costa Sur Generation Facility (collectively, the "Generation Facilities"). As third parties do not have access to the ECO LNG Terminal, PREPA entered into separate renegotiations of the Pre-Restatement Contracts with Naturgy and ECO on a bilateral basis to extend the term and realize cost savings and signed the

[3] *See* PREPA Certified Fiscal Plan, dated August 1, 2018; *see also* PREPA Certified Fiscal Plan, dated June 27, 2019.

Naturgy GSPA and ECO PPOA on March 23rd and March 27th of this year, respectively.[4]

7. The Contracts (i) extend the LNG-to-Power Program until September 2032, (ii) restructure the fuel supply arrangements such that (a) Naturgy imports LNG, converts such LNG into natural gas through the ECO LNG Terminal and sells this natural gas to PREPA for delivery to each of the Generation Facilities, and (b) PREPA supplies (but does not sell) natural gas to the ECO Generation Facility, (iii) restructure the Pre-Restatement PPOA such that ECO makes available power generation capacity from the ECO Generation Facility for dispatch, utilizing the natural gas supplied by PREPA, in exchange for a monthly payment by PREPA (as further defined in the ECO PPOA, the "Capacity Payment"), and (iv) will reduce PREPA's purchase costs of power and fuel on a net basis by approximately $100 million annually through September 2032.[5] Performance by the parties of one Contract depends on the performance by the parties of the other Contract.[6]

8. PREPA has determined the renegotiated terms of the Contracts are favorable as such terms reduced costs associated with the contracts that could be passed onto ratepayers, as well as extended the term of the contracts.

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[4] PREPA engaged Sargent & Lundy ("S&L"), to assist it in negotiating the amended contracts with ECO and Naturgy. S&L advised PREPA on all financial and technical analysis related to the negotiation, implementation and assumption of its operating and purchasing agreements.

[5] An earthquake on January 7, 2020 damaged both of the generation units at the Costa Sur Generation Facility. PREPA has initiated a program to assess whether it should repair the Costa Sur Generation Facility or retire and replace it with new combined-cycle generation facility. Regardless of whether PREPA retires the existing Costa Sur Generation Facility or recommences the operation of one or both of the units of such facility, the assumption by PREPA of the Contracts will still materially benefit PREPA because a substantial part of the annual savings achieved through the Contracts arises from the supply by PREPA of natural gas to, and PREPA's ongoing ability to dispatch power generation capacity at, the ECO Generation Facility, up to September 2032. Moreover, the Naturgy GSPA provides PREPA with nomination flexibility to permanently or temporarily reduce the minimum contract quantities that fix PREPA's take-or-pay liability under a wide range circumstances, including the retirement of the Costa Sur Generation Facility and the occurrence of Force Majeure or a forced outage that affects the operations of such facility.

[6] Although the ECO PPOA falls within the assumption procedures approved last year, the Naturgy GSPA does not. Because of the interdependency of the Contracts, PREPA seeks an assumption of both Contracts through this Motion.

9. Further, on December 26, 2019, the Oversight Board approved both the ECO PPOA and Naturgy GSPA under the contract review policy established pursuant to PROMESA section 204(b)(2), confirming PREPA's compliance with the Fiscal Plan. The Puerto Rico Energy Bureau ("PREB") also approved the Contracts after a reconsideration process whereby PREB confirmed that PREPA provided them with "a robust analysis" of the contracts and agreed with PREPA that the terms of such contracts were favorable.

10. PREPA's ability to make available low-cost, EPA emission-compliant electricity on a secure basis to ratepayers from the Generation Facilities depends on a long-term source of uninterrupted supply of natural gas. If PREPA fails to assume the Contracts, PREPA will have no other cost-effective options to dispatch natural gas generation sources in the southern part of Puerto Rico following the expiration of the existing PPOA and GSPA. Naturgy controls the entire existing capacity of ECO's import terminal to receive and vaporize LNG for the delivery of natural gas to the Generation Facilities. Third party LNG suppliers have no access rights to this terminal. ECO's low merit order position[7] in Puerto Rico's electricity sector and Naturgy's *de facto* monopoly over the supply of gas into the southern part of the island limit PREPA's alternatives for a supplier of natural gas and power.

11. Additionally, PREPA believes the terms of the Contracts are favorable. The contracts provide PREPA with flexibility, reliability, and resilience for the grid system. Renegotiating the Contracts at the current market rates, which are significantly lower than the rates set forth in the original contracts, provides ratepayers with immediate savings of approximately

[7] "Merit order" is a way of ranking available sources of energy, especially electrical generation, based on ascending order of price paired with amount of energy that will be generated. The ranking is so that those with the lowest marginal costs are the first ones to be brought online to meet demand, and the plants with the highest marginal costs are the last to be brought on line. Thus, ECO's low merit order meets in would be one of the first facilities to be brought online to meet demand.

$100 million per year. It is my understanding that approximately 70% of the estimated savings derives from operations at the ECO Generation Facility and the remaining 30% derives from operations at the Costa Sur Generation Facility.

12. Under the ECO PPOA, PREPA negotiated a reduction in the Capacity Payment equal to $108 million annually. While I have been advised that these Capacity Payment savings are partially offset by increased fuel costs, the net reduction still corresponds to approximately $35 million annually in savings, which will be passed along to ratepayers.[8]

13. Given the expectation for increased dispatch of the units as a result of improved contract terms, load requirements, and current available system capacity, PREPA estimates a total savings of $71 million per year through operations at the ECO Facility. PREPA has historically paid 12.4 cents/kWh for generation from the ECO Facility (fixed plus variable costs), but will likely pay an average of 10.7 cents/kWh under the renegotiated Contracts. PREPA has determined that such a reduction in generation costs will result in substantial savings to Puerto Rico's ratepayers.

14. Further, the renegotiated Naturgy GSPA removed a mechanism that acted as a built-in pricing hedge to oil. PREPA projects that removing the hedge to oil and reducing the adder fee will result in average savings for PREPA of approximately $29.1 million per year for the Costa Sur Facility. These savings are based upon fuel commodity price forecasts, which predict that natural gas prices will remain much lower than oil prices over the next decade.

15. As of the date hereof, PREPA has not defaulted on any provision of either of the Contracts, and thus no cure or cure payments are due from PREPA. Similarly, the assumption of the Contracts does not result in a breach or violation of, or default under, Contracts. Certain costs

[8] These estimated savings assume that PREPA continues to dispatch the ECO Facility under at historical levels.

under the ECO PPOA, arising both pre-and post-petition remain subject to reconciliation and payment in the ordinary course.

16. PREPA has determined that the renegotiated Contracts provide PREPA with significant cost savings, which will be critical to its operations and ability to meet its debt service obligations while it proceeds through its Title III Case, ensuring the utility a reliable and continuous source of power and natural gas on reasonable terms.

17. Further, the requested assumption, which was negotiated as part of the renegotiated Contracts, allows PREPA to maintain a positive business relationship with ECO and Naturgy, which is critical given that ECO and Naturgy are the only cost-effective options to dispatch natural gas, generation sources in the southern part of Puerto Rico.

18. Ultimately, PREPA's inability to maintain a contractual relationship with ECO or Naturgy during the pendency of this Title III Case would harm its operations and could have a severe negative impact on the residents and businesses of Puerto Rico. Accordingly, assuming the Contracts is a sound exercise of its judgment.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

April 1, 2020

Fernando M. Padilla
Administrator, Program
Management Office
Restructuring and Fiscal Affairs